

**MINUTES
OF THE REGULAR MEETING OF THE
EDINA CITY COUNCIL
HELD AT CITY HALL
JULY 6, 2010
7:08 P.M.**

ROLLCALL Answering rollcall were Members Bennett, Brindle, Housh, Swenson and Mayor Hovland.

CONSENT AGENDA ITEMS APPROVED Motion made by Member Bennett and seconded by Member Swenson approving the Council Consent Agenda with the exceptions of Items II.B., insurance renewals; III.I.2., set hearing date for planning items: amendment to final development plan, Cypress Equities (8/2/2010); III.J., Resolution No. 2010-54 authorizing use of central count ballot counter for primary and general elections; and III.L., Resolution No. 2010-55, appointing Interim City Manager.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***MINUTES APPROVED – REGULAR MEETING OF JUNE 15, 2010, AND WORK SESSION OF JUNE 15, 2010** Motion made by Member Bennett and seconded by Member Swenson approving the minutes of the regular meeting of June 15, 2010, and work session of June 15, 2010.

Motion carried on rollcall vote – five ayes.

***AWARD OF BID – 15 DSR-E SQUAD RADAR PACKAGES – EDINA POLICE DEPARTMENT** Motion made by Member Bennett and seconded by Member Swenson awarding the bid for 15 DSR-E squad radar packages to the recommended low bidder, Stalker Radar Applied Concepts, Inc. at \$37,032.19.

Motion carried on rollcall vote – five ayes.

AWARD OF BID – INSURANCE RENEWALS: 1. WORKERS COMPENSATION, 2. GENERAL LIABILITY, AND 3. PROPERTY The Council asked whether a workers compensation bid was requested from the League of Minnesota Cities. Bill Homeyer, agent of record, indicated he contacted the League each year to request a quote, but they had declined since their bid was not competitive. Assistant to City Manager Smith advised that the League does not insure several other Minnesota cities in addition to Edina, and the payments made to the League were for deductibles from on-going worker's compensation claims.

The Council noted the property insurance premium would decrease. Jack Carroll, agent of record, confirmed that more markets were willing to quote property insurance so that premium would decrease by 40 percent. **Member Bennett made a motion, seconded by Member Swenson, awarding the bid for worker's compensation at \$470,143; general liability at \$338,096; and property insurance at \$51,259 to the recommended low bidder, Traveler's.**

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***AWARD OF BID – SHELVEING FOR NEW PUBLIC WORKS FACILITY** Motion made by Member Bennett and seconded by Member Swenson awarding the bid for shelving for new Public Works Facility to the recommended low bidder, Mid America Business Systems at \$76,299.82.

Motion carried on rollcall vote – five ayes.

ORDINANCE NO. 2010-08 ADOPTED – AMENDING SECTION 850 ADDING HEIGHT OVERLAY DISTRICT Assistant Planner Aaker presented the recommendation of staff and the

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Planning Commission to approve an ordinance amendment to establish a building height overlay district to regulate building heights in the commercial, industrial, and high density residential zoning districts. This amendment would bring the City's zoning ordinance into compliance with the comprehensive plan, which established maximum building heights within certain areas of the City. Ms. Aaker noted this amendment had been previously considered by the Council and would result in three revisions: 1. the area north of 66th Street, west of Xerxes, from a 4-story maximum to a 12-story maximum; 2. the area west of France Avenue, south of 76th Street and east of Parklawn from 4-story maximum to a 12-story maximum; and, 3. the Gramercy site on 70th Street, west of Highway 100, from an 8-story maximum to a 4-story maximum.

Following consultation with Attorney Knutson, Council consensus was reached to clarify wording: page 2, paragraph following MDD chart, to indicate: "The minimum building setback shall be increased by one-half foot for each foot the building height exceeds the minimum required setback. If the tract abuts land zoned and used for residential purposes, the required interior side yard setback shall not be less than 35 feet." Page 4, paragraph C1: change the word "exceeds" to "exceed," page 4, sixth paragraph, to indicate: "(ii) pedestrian connections by way of skyways and tunnels. The City Council will consider" page 5, Section 850.22, Subd. 1. Purpose, to indicate: "...building height regulations in order to minimize the visual impact of tall buildings..." **Member Housh made a motion to grant First Reading and waive Second Reading adopting Ordinance No. 2010-08, amending the zoning ordinance to add a building height overlay district, as revised.** Member Swenson seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION NO. 2010-52 ADOPTED – DIRECTING STUDY OF ROOFTOP RESTAURANTS

Manager Hughes advised that at least one restaurant was considering rooftop dining, so staff recommended a moratorium to study potential parking issues and nuisance aspects of dining in those locations. The Council discussed the recommendation and whether the moratorium should be placed for six months, with the option to extend, in an effort to not impede commerce or discourage businesses from investing in Edina. It was acknowledged that the study should also address the potential for increased parking demand, especially 50th and France Avenues during summer months, that rooftop restaurant in some zoning districts may have different impacts, and staff's report was to be received within six months. **Member Housh introduced and moved adoption of Resolution No. 2010-52, directing completion of a study on the regulation of rooftop restaurants and preparation of official controls based upon that study with staff's report received within six months.** Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

ORDINANCE NO. 2010-14 ADOPTED – ESTABLISHING A MORATORIUM ON ROOFTOP RESTAURANTS IN EDINA **Member Brindle made a motion to grant First Reading and waive Second Reading adopting Ordinance No. 2010-14, an interim ordinance temporarily prohibiting rooftop restaurants.** Member Housh seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

ORDINANCE NO. 2010-10 ADOPTED – AMENDING CITY CODE CONCERNING SWIMMING POOLS; FOOD ESTABLISHMENTS AND FOOD VENDING MACHINES; AND HOTELS, LODGING AND BOARDING HOUSES Community Health Administrator Engelman presented staff's recommendation to amend ordinance language to be consistent with State requirements and answered questions of the Council. **Member Swenson made a motion to grant First Reading and waive Second Reading adopting Ordinance No. 2010-10, amending the City**

Code concerning swimming pools; food establishments and food vending machines; and hotels, lodging and boarding houses. Member Brindle seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

LEAGUE OF WOMEN VOTERS STUDY PRESENTED AND TAKEN UNDER ADVISEMENT

Suzanne Kerwin, 5238 Hollywood Road, presented the study conducted by the League of Women Voters regarding private use and access to public facilities in Edina with a focus on park and recreation facilities and city communications. Ms. Kerwin advised of the League's recommendations and thanked City staff for its cooperation. The City Council thanked Ms. Kerwin and all who served on the study committee and indicated the study would be taken under advisement.

RESOLUTION NO. 2010-56 ADOPTED – IDENTIFYING NEED FOR LIVABLE COMMUNITY ACT GRANT FOR GRANDVIEW DISTRICT REPORT

Assistant Manager Worthington presented staff's recommendation to authorize submission of a grant for funding to do an in-depth small area plan for the Grandview District. The Council discussed the recommendation and asked questions of Ms. Worthington about the grant process. It was noted that the grant filing deadline was July 19, 2010, and the Citizens Advisory Team (CAT) would continue to oversee the vision.

Kim Montgomery, CAT member, explained the CAT Chairs were not available, so it was agreed that members would come forward at the meeting to assure the application fully reflected CAT's desire and criteria since there were no plans to reconvene before the submittal deadline. Ms. Worthington indicated the application would be based on CAT's seven guiding principles and she had informed CAT Chair Staunton that the grant draft would be submitted to CAT for its input prior to submittal. **Member Swenson introduced and moved adoption of Resolution No. 2010-56 identifying the need for livable community's demonstration account funding and authorizing an application for grant funds.** Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION NO. 2010-53 ADOPTED ACCEPTING VARIOUS DONATIONS Mayor Hovland explained that in order to comply with State Statutes; all donations to the City must be adopted by Resolution and approved by four favorable votes of the Council accepting the donations. **Member Bennett introduced and moved adoption of Resolution No. 2010-53 accepting various donations.** Member Brindle seconded the motion.

Rollcall:

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

ENERGY & ENVIRONMENT COMMISSION APPOINTMENT DELAYED The City Council discussed the appointment process and acknowledged the recommendation of Energy & Environment Commission Chair Plunkett Latham to not fill the vacancy until the end of the year when annual appointments were made. Member Housh noted that several applications had been received from citizens who were interested in serving on this Commission. **Member Brindle made a motion, seconded by Member Swenson, to not fill the Energy & Environment Commission vacancy until the end of the year when annual appointments were made.**

Ayes: Bennett, Brindle, Swenson, Hovland

Nays: Housh

Motion carried.

***PUBLIC HEARING DATE SET FOR PLANNING ITEM: FINAL DEVELOPMENT PLAN, FINAL PLAT & FINAL REZONING – THE WATERS (7/20/2010)** Motion made by Member Bennett

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and seconded by Member Swenson setting a public hearing date of July 20, 2010 for The Waters, Final Development Plan, Final Plat, and Final Rezoning.

Motion carried on rollcall vote – five ayes.

PUBLIC HEARING DATE SET FOR PLANNING ITEM: AMENDMENT TO FINAL DEVELOPMENT PLAN – CYPRESS EQUITIES (8/2/2010) It was noted that resident concern remained regarding the Cypress Equities project.

John Bohan, 800 Coventry Place, requested that the public hearing allow comment on the applicant's June 11, 2010, request for amplification of music; the June 24, 2010, request for revised elevation to add sliding glass doors and a two-sided wood burning fireplace; and, that the August 2, 2010, public hearing notice clarify these two points.

Attorney Knutson explained the public hearing before the Planning Commission only addressed amplification of music with the intention that the other two issues (sliding glass doors and wood burning fireplace) would come directly before the Council for determination whether the amendments were minor not requiring a public hearing or should be referred to the Planning Commission for hearing.

The Council discussed the amendments and application timing. Mr. Hughes noted that should the Council elect to defer the two items to the Planning Commission for public hearing, it could be accommodated at their July 28, 2010, meeting. In addition, both published and mailed notice could be given for the Planning Commission and Council meetings. **Member Swenson made a motion, seconded by Member Housh, setting public hearing date for planning item: amendment to final development plan, Cypress Equities, to August 2, 2010, and referring the requested amendments for the glass partition and fireplace to the Planning Commission for review and comment.**

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

RESOLUTION NO. 2010-54 ADOPTED – AUTHORIZING USE OF CENTRAL COUNT BALLOT COUNTER FOR PRIMARY AND GENERAL ELECTIONS The Council asked questions of City Clerk Mangen regarding the type of paper reports generated by the ballot counter and process to count absentee ballots. **Member Bennett introduced and moved adoption of Resolution No. 2010-54, authorizing election equipment central counter for absentee ballots.** Member Brindle seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***GRANT ACCEPTED – AGREEMENT FOR OUTDOOR HOCKEY RINKS PROJECTS, HENNEPIN COUNTY YOUTH SPORTS, APPROVED** Motion made by Member Bennett and seconded by Member Swenson accepting the \$60,000 grant awarded by the Hennepin Youth Sports Program of Hennepin County and approving the agreement for outdoor hockey rinks project as submitted and required by Hennepin County.

Motion carried on rollcall vote – five ayes.

RESOLUTION NO. 2010-55 ADOPTED – APPOINTING INTERIM CITY MANAGER The Council noted Manager Hughes' last day would be July 30, 2010, at 4:30 p.m. and consensus was reached to revise the resolution to indicate that Interim City Manager Worthington would be appointed on an interim basis starting on July 30, 2010, at 4:31 p.m. **Member Swenson introduced and moved adoption of Resolution No. 2010-55, appointing City Manager on an interim basis as revised above.** Member Bennett seconded the motion.

Ayes: Bennett, Brindle, Housh, Swenson, Hovland

Motion carried.

***RESOLUTION NO. 2010-57 ADOPTED – CALLING PUBLIC HEARING AUGUST 2, 2010, FOR INTERLACHEN BOULEVARD SIDEWALK IMPROVEMENT: NO. S-106 AND NORMANDALE ROAD AND VALLEY VIEW SIDEWALK IMPROVEMENT: NO. S-104** Motion made by Member Bennett and seconded by Member Swenson to adopt Resolution No. 2010-57, set public hearing of August 2, 2010, sidewalk construction for Interlachen Boulevard, Improvement No. S-106, Normandale Road and Valley View Road, Improvement No. S-104.

Motion carried on rollcall vote – five ayes.

COMMUNITY COMMENT

Tom Moses, 6969 Langford Court, expressed his concern about adverse impacts resulting from the designated bicycle routes. The Council advised that a joint meeting with the Three Rivers Park District would be scheduled, and if the proposed multipurpose recreation trail routes moved forward, a public hearing would be held when residents could provide testimony.

Julie Boemer, 6971 Langford Court, asked whether citizens could e-mail comments to the Council. The Council answered in the affirmative.

COMPREHENSIVE ANNUAL FINANCIAL REPORT (CAFR) FOR YEAR ENDED DECEMBER 31, 2009 RECEIVED Finance Director Wallin thanked Assistant Finance Director Roggeman and the entire Finance staff for their work on the financial report, noting the City received the Certificate of Achievement of Excellence for Financial Reporting from the MnGFOA.

James Eichten, Malloy, Montague, Karnowski, Radosevich & Co., P.A., presented the comprehensive annual financial report (CAFR) for year ended December 31, 2009, management report, and special purpose audit report. He advised that the audit received an unqualified clean opinion and the report would be submitted to the MnGFOA for consideration of certification. Mr. Eichten stated there were no findings related to internal controls and no issues of non-compliance. He said there were two minor findings: 1) additional language was necessary in a contract and 2) advertisements for bids must have ten days publication prior to bid submission. Mr. Eichten advised the City's financial records continue to be in excellent condition. **Member Brindle made a motion, seconded by Member Housh, to accept the comprehensive annual financial report for year ended December 31, 2009.**

Member Bennett noted the audit report included not only the \$28 million general fund but an analysis of all funds, totaling \$79 million. She asked the Council to defer action for two weeks to allow additional time for Council and public review prior to acceptance of the CAFR. The Council discussed this request and noted the audit report was for the past year and residents could make comment at any time during Public Comment, even if the report was accepted. It was noted that going forward, the Council could discuss its level of involvement with enterprise operations.

Ayes: Brindle, Housh, Swenson, Hovland

Nays: None

Abstain: Bennett

Motion carried.

***CONFIRMATION OF CLAIMS PAID** Motion made by Member Bennett and seconded by Member Swenson approving payment of the following claims as shown in detail on the Check Register dated June 17, 2010, and consisting of 30 pages: General Fund \$318,697.68; Communications Fund \$14,346.24; General Debt Service Fund \$2,390.00; Working Capital Fund \$3,046.67; Equipment Replacement Fund \$258.70; Art Center Fund \$5,147.31; Golf Dome Fund \$1,388.00; Aquatic Center Fund \$5,649.62; Golf Course Fund \$34,656.92; Ice Arena Fund \$6,753.73; Edinborough/Centennial Lakes Fund \$19,523.45; Liquor Fund \$228,229.39; Utility Fund \$61,172.19; Storm Sewer Fund \$823.73; Recycling Fund \$37,683.00; PSTF Agency Fund \$796.23; TOTAL \$740,562.86; for approval of payment of claims dated June 24, 2010, and consisting of 34 pages: General Fund \$156,278.61; Communications Fund \$5,395.41; General Debt Service Fund \$2,000.00; Working Capital

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Fund \$1,420,855.15; Equipment Replacement Fund \$24,712.11; Art Center Fund \$4,699.38; Golf Dome Fund \$154.71; Aquatic Center Fund \$8,942.97; Golf Course Fund \$28,573.93; Ice Arena Fund \$408,426.01; Edinborough/Centennial Lakes Fund \$9,766.39; Liquor Fund \$144,447.61; Utility Fund \$210,331.72; Storm Sewer Fund \$324,249.68; TOTAL \$2,748,833.68; and, for approval of payment of claims dated July 1, 2010, and consisting of 36 pages: General Fund \$107,051.36; Communications Fund \$3,004.49; Working Capital Fund \$123,343.83; Equipment Replacement Fund \$5,711.16; Art Center Fund \$14,484.34; Golf Dome Fund \$44.96; Aquatic Center Fund \$6,895.63; Golf Course Fund \$42,993.36; Ice Arena Fund \$4,223.72; Edinborough/Centennial Lakes Fund \$20,113.96; Liquor Fund \$228,995.63; Utility Fund \$42,159.36; Storm Sewer Fund \$17,796.81; Recycling Fund \$32.61; PSTF Agency Fund \$5,497.20; TOTAL \$622,348.42.

Motion carried on rollcall vote – five ayes.

REQUEST FOR INDEPENDENT LEGAL OPINION, INDEPENDENT AUDIT, AND REPORT ON EMPLOYMENT CONTRACT AND EMPLOYEE BENEFIT POLICY

Member Bennett stated that Mr. Hughes' Employment Contract and the Employee Benefit Policy govern the payout of Mr. Hughes' accrued vacation and sick leave. She indicated it appeared there were several internal inconsistencies contained in the Policy such as the definition between "accrual" and "maximum annual carry forward." The Employment Contract stated it was subject to the Policy but also stated provisions not consistent with the Policy. She noted that one of the Council's biggest responsibilities was fiscal oversight. Member Bennett said it was the Council's duty to exercise this fiscal oversight since the handling of this matter could have implications to the City in similar situations. **Member Bennett made a motion that the City: 1. obtain an independent outside legal opinion as to the interrelationship, interpretation, and application of the Employment Contract and Employee Benefit Policy; 2. obtain an independent outside third-party audit of the benefits payout itself; and, 3. the results and determinations of these studies be brought back to the Council for review.** Mayor Hovland called for a second to the motion for discussion purposes. Hearing none, he declared the motion to have failed for lack of a second.

Mayor Hovland indicated that the 1998 employment contract was signed by the City and Mr. Hughes when it was legally represented by Dorsey and Whitney. That contract entitled Mr. Hughes to certain benefits including sick leave and vacation accrual. He noted the City Attorney had advised the Council that the accrual information was confidential and would become public information when the benefits were paid out. Member Bennett clarified she was not asking to void Mr. Hughes' contract or deny responsibilities but was requesting clarification so the Council's responsibility could be discharged in a responsible manner.

There being no further business on the Council Agenda, Mayor Hovland declared the meeting adjourned at 9:15 p.m.

Respectfully submitted,

Debra A. Mangan, City Clerk

Minutes approved by Edina City Council, July 20, 2010.

James B. Hovland, Mayor

Video Copy of the July 6, 2010, meeting available.